

complaint

Mr U complains about the advice he was given by Openwork Limited when he took out a joint mortgage with his wife and paid her for a half share in her property.

background

Mr U complains about the advice he says he got to take out an offset mortgage. Mr U says that in 2012, he purchased a half share in a property owned by his wife and paid the purchase price into an offset account in her name. He also became a joint mortgage holder with his wife. He says that Openwork advised him to do this. Mr U and his wife are now involved in divorce proceedings and Mr U is concerned that he will not get back half the property. Our adjudicator did not recommend that this complaint should be upheld on the basis that Openwork had not acted unreasonably. Mr U disagreed saying in summary that he did not receive proper protection from his advisor.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Mr U complains of poor advice from Openwork in not alerting him to the fact that he would be jointly liable with his wife for the mortgage and should have alerted him to the risks of putting the offset mortgage account in his wife's sole name. Mr U says that in January 2012 he arranged to buy a half share in a property then owned by his wife for £45,000 being half the market value. Mr U had already paid £6,000 and he paid the balance of £39,000 into an offset mortgage account which was set up in the sole name of his wife. Mr U says that the intention was that he would not be responsible for further contributions to the mortgage but despite that, Mr U became a joint mortgage holder with his wife. Mr U says that that his wife was to be solely responsible for the entire outstanding loan but Mr U says that Openwork told him it was essential for Mr U to become a party to the mortgage as he held a half share interest in the property.

Mr U says that he understood that the £39,000 was paid into the offset mortgage account to insure that there would be a lump sum payment available to pay off the mortgage at the end of its term. But Mr U says that he was not advised that as the account is in his wife's sole name, it could be depleted by her without his knowledge or agreement.

Openwork says that it was Mr U and his wife who decided on the transfer of the property into joint names. It says it did not advise on that but was asked to advise on providing a mortgage for the property that was suitable for their needs. Openwork says that the documentation provided to Mr U told him that he would be jointly responsible for the mortgage with his wife. It also says that as Mr U paid the purchase money directly to his wife, she was free to deal with it as she wished and Openwork did not advise him on that.

I acknowledge that this is a very difficult matter for Mr U as the divorce has come fairly swiftly after he agreed the transfer of this money to his wife and he became joint mortgage holder with her. Looking back, I can see that Mr U might now wish that he had done things differently. Mr U says in this complaint that Openwork are at fault as it did not carry out his intentions that he "should not be responsible for further contributions to the mortgage".

Openwork says that it was approached to specifically advise only on a remortgage and not on the financial arrangements between the partners in the marriage. The problem for Mr U is that the paperwork including the suitability letter and the mortgage offer support Openwork's

case. Moreover, the evidence from Mr U is also supportive of it. Mr U says that the money given to his wife was to be held in an account to pay off the mortgage at the end of term. Mr U's disappointment that this will not occur only makes sense in the context that he knew he was agreeing to a joint mortgage with his wife.

Openwork in its response says there were various opportunities at which Mr U could have taken legal advice on his arrangements with his wife but declined the opportunity to do so. This is disputed by Mr U in his letter of 26 July 2015 when he says that he was not advised to take proper legal advice. However, Openwork in its letter of 12 December 2014 says that Mr U had the services of a solicitor to transfer the title of the property and there were clear indications on the documents signed by Mr U that if he had concerns as to whether the transfer would benefit him, he should take independent legal advice. Openwork also says that Mr U chose to give the £45,000 to his wife and that it was hers to deal with as she wished.

The arrangement between Mr U and his wife about the purchase of the property was between them and had nothing to do with any recommendation by Openwork. It also seems clear that Mr U and his wife decided between themselves to remortgage the property. They engaged Openwork to advise on the particular mortgage and not to advise on whether Mr U should be a joint mortgage holder or not. The implications of being a joint mortgage holder were set out for Mr U in the documents he was supplied with. If he was not clear about the arrangements or his potential exposure, he had the opportunity to take independent legal advice. In addition it was Mr U's decision to give his wife £45,000 and not a matter that he looked to Openwork for advice on. As a result I am unable to find fault with Openwork's advices and I cannot fairly uphold this complaint.

my final decision

My decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 13 November 2015.

Gerard McManus
ombudsman